OFFICE OF THE INSPECTOR GENERAL

STEVE WHITE, INSPECTOR GENERAL

REVIEW OF THE EMPLOYEE DISCIPLINARY PROCESS

CALIFORNIA DEPARTMENT OF CORRECTIONS

MARCH 2002

GRAY DAVIS, GOVERNOR

PROMOTING INTEGRITY

State of California

Office of the Inspector General
801 K Street, Suite 1900
Sacramento, CA 95814

Memorandum

Date: March 14, 2002

To: EDWARD S. ALAMEIDA, Jr. Director
California Department of Corrections

From: STEVE WHITE
Inspector General

Subject: EMPLOYEE DISCIPLINARY PROCESS REPORT

Enclosed is a report presenting the results of the special review conducted by the Office of the Inspector General of the California Department of Corrections employee disciplinary process. The review was conducted pursuant to the Inspector General's authority under California Penal Code Section 6126.

The Office of the Inspector General review found a number of systemic deficiencies in the department's employee disciplinary process. The combined effect of the deficiencies is to jeopardize the department's ability to administer appropriate adverse action against peace officers within the one-year statutory deadline. The situation is unacceptable, as it raises questions about the integrity of the process and could have profound legal and administrative ramifications.

I urge you and your executive management team to give this issue particular attention, as a solution will require various operating units within the department to work in an organized and coordinated fashion. To ensure that appropriate corrective measures are taken, the Office of the Inspector General will schedule follow-up reviews in six-month increments to assess the department's progress in rectifying the deficiencies noted in this report.

Please call me if you wish to discuss this matter further.

SW/dj

OFFICE OF THE INSPECTOR GENERAL

STEVE WHITE, INSPECTOR GENERAL

REVIEW OF THE EMPLOYEE DISCIPLINARY PROCESS
CALIFORNIA DEPARTMENT OF CORRECTIONS

REPORT

MARCH 2002

PROMOTING INTEGRITY

CONTENTS

EXECUTIVE SUMMARY

This report presents the results of a special review conducted by the Office of the Inspector General of the employee disciplinary process established by the California Department of Corrections. The review was performed pursuant to the oversight authority provided to the Office of the Inspector General under *California Penal Code* Section 6126. The review centered on the procedures used by the department to carry out the employee disciplinary process within statutory deadlines, to properly prepare adverse action cases, and to negotiate adverse action settlements with employees.

The Office of the Inspector General found deficiencies in the employee disciplinary process that affect the department's ability to meet the one-year statutory deadline for imposing adverse actions against public safety officers. The department also has not established needed policies and procedures or provided the training necessary to ensure that employee disciplinary actions and settlements are handled properly. Specifically, the Office of the Inspector General found the following:

FINDING 1

The Office of the Inspector General found that the needless complexity of the employee disciplinary process causes delays that impair the ability of the Department of Corrections to take appropriate action against employees found to have engaged in misconduct.

Under *California Government Code* Section 3304(d), employing agencies may not take adverse action against a public safety officer for misconduct unless the investigation into the misconduct is completed within one year of the date of discovery—that is, one year from the date a person authorized to initiate an investigation learned of the misconduct. Except in specified circumstances, the agency must also notify the officer in writing within the one-year period of its decision to impose disciplinary action and must provide the notification within 30 days of that decision. But the employee disciplinary process at the Department of Corrections is so needlessly complex and involves so many different entities that the department often is unable to meet the one-year deadline. In a review of selected cases, the Office of the Inspector General found that 43 percent were not completed within the required time limit.

FINDING 2

The Office of the Inspector General found that the Department of Corrections has no clear guidelines for defining the prescribed one-year period for investigating alleged misconduct and imposing disciplinary action against peace officers or for identifying the required 30-day notification period.

Despite the requirements set forth in the *California Government Code*, the Department of Corrections has no clear criteria for determining when the one-year period for investigating misconduct and imposing disciplinary action begins and ends. The Office of the Inspector General found that the department has no clear guidelines for establishing the date the

alleged misconduct was discovered, for defining who is "authorized to initiate an investigation," or for determining the date the department decided to impose disciplinary action in order to identify the 30-day notification period. The absence of such guidelines likewise impairs the department's ability to impose adverse action.

FINDING 3

The Office of the Inspector General found that employee relations officers at institutions are not provided with adequate training and often lack the experience necessary to properly handle employee disciplinary actions.

Core responsibility for preparing adverse actions and representing institutions at State Personnel Board hearings falls to employee relations officers, but these employees typically have neither the training nor the experience to fulfill that responsibility. The Department of Corrections has not established either minimum background requirements or regular mandatory training for employee relations officers, and the position is most often designated as a training and development assignment with a two-year limited term. The absence of adequate training and experience requirements for employee relations officers and the regular turnover in employee relations officer positions both contribute to the department's difficulty in meeting the one-year statutory deadline for completing the employee disciplinary process in cases involving public safety officers.

FINDING 4

The Office of the Inspector General found that most of the employee disciplinary actions at the Department of Corrections proceed all the way through settlement and hearings before the State Personnel Board without advice or assistance from the department legal staff.

The Employment Law Unit of the Department of Corrections Legal Affairs Division is responsible for providing legal assistance and representation to the department in employee disciplinary cases. Yet, most employee disciplinary cases are handled from start to finish by employee relations officers, who are on temporary assignment and have little training in employment law.

In many of the cases in which the Employment Law Unit does participate, that involvement is limited to representing the department or institutions at State Personnel Board hearings. Even in those cases, the legal staff often does not become involved until shortly before the hearing—after adverse action packages have already been prepared and served and the ability to correct errors or defects is limited.

FINDING 5

The Department of Corrections has not established policies and procedures governing settlement of employee disciplinary actions and has no means of monitoring or evaluating the settlement process.

About one-third of employee disciplinary cases in which allegations are sustained are resolved with the Department of Corrections agreeing to a settlement. But the department has no policies or procedures governing the settlement process and no means of evaluating the appropriateness of the settlements. The department has not defined the types of circumstances in which a settlement would be appropriate, who has authority to initiate and accept a settlement, or what information must be maintained to document and support the settlement agreement. Nor does the department maintain the information necessary to identify systemic problems in the settlement process.

RECOMMENDATIONS

The Office of the Inspector General recommends that the Department of Corrections take the following actions:

- Establish a centralized system to monitor and track the status of employee disciplinary cases. The department should consider modifying either the personnel operations information management system or the Employment Law Unit information management system to include this tracking capability. The system should also include an early warning mechanism for cases in danger of exceeding statutory time limits.

- Issue clear guidelines defining what constitutes the date of discovery, who is "authorized to initiate an investigation," and the date the department makes its decision to impose discipline.

- Establish a formalized training program for employee relations officers at the institutions. The department should also convert the employee relations officer positions from temporary training assignments to permanent positions.

- Establish formalized policies and procedures to expand the role and responsibility of the Employment Law Unit in the preparation of employee disciplinary actions. Implement a process for monitoring court decisions and State Personnel Board rulings affecting employee disciplinary actions**.** Provide Internet access to employee relations officers and conform to standard management practices by instituting a comprehensive e-mail system to improve communication between headquarters staff and institution employees.

- Establish policies and procedures governing employee disciplinary action settlements and require that the necessary documentation be maintained for monitoring and evaluating the settlement process.

INTRODUCTION

The Office of the Inspector General was established by *California Penal Code* Section 6125 to provide oversight for the Youth and Adult Correctional Agency, and its subordinate departments. Pursuant to *California Penal Code* Section 6126, the Office of the Inspector General is responsible for reviewing policies and procedures and conducting audits of departments within the Youth and Adult Correctional Agency. The audits and reviews are intended to identify areas of noncompliance with statutory and regulatory requirements, to specify deficiencies, and to recommend corrective actions.

BACKGROUND

The California Department of Corrections employs a workforce of approximately 46,000 to fulfill its oversight responsibility for 160,000 state prison inmates and 90,000 parolees. An essential function of the department as an employer is to ensure appropriate conduct on the part of its employees and to take disciplinary action against those found to have engaged in misconduct. For that purpose, the department has established a comprehensive employee disciplinary process, which is subject to statutory and regulatory provisions setting forth employee rights and due process considerations.

The principal laws affecting the department's ability to take administrative action against employees are *California Government Code* Sections 19635 and 3300 et seq. *California Government Code* Section 19635 establishes that no adverse action may be taken against a state employee unless the notice of adverse action is served within three years of the action that is the basis for the discipline, or within three years of the date of discovery for adverse actions based on fraud, embezzlement, or falsification of records.

California Government Code Sections 3300 through 3311 define employee disciplinary protections granted to public safety officers. Specifically, Section 3304(d) precludes an employing agency from taking punitive action against a public safety officer based on an investigation of misconduct if the investigation is not completed and the public safety officer notified within one year of the public agency's discovery of the misconduct by a person authorized to initiate an investigation. Section 3304(f) requires a public agency to notify a public safety officer in writing of its decision to impose discipline, within 30 days of its decision. Such notice must also include the date on which the discipline will be imposed. Consistent with these statutory provisions, the department is required to notify its employees of its intent to take adverse action within three years of occurrence for non-peace officers and within one year of discovery for peace officers.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objective of this review was to evaluate the department's employee disciplinary process, beginning with the date of discovery and the institution's submission of a request for investigation (form CDC-989) and following the process to the ultimate disciplinary action taken. The review was undertaken to identify administrative and procedural weaknesses in the disciplinary process that might adversely affect the department's ability to take appropriate adverse action against employees found to have engaged in misconduct.

Fieldwork for the review was conducted from August through November 2001 and covered the procedures used by the following units of the California Department of Corrections headquarters:

- Director's office
- Regional administrator's office – Institutions Division
- Regional administrator's office – Health Care Services Division
- Legal Affairs Division – Employment Law Unit
- Office of Investigative Services
- Personnel management office - Operations Unit

Employee disciplinary procedures and sample cases were also reviewed at six selected state correctional institutions. The institutions reviewed included two institutions each in the northern, central, and southern regions.

The review covered:

- Timeframes for preparing and submitting investigation requests
- Timeframes for investigating cases
- Adherence to departmental and statutory deadlines
- Timeframes for preparing and submitting adverse action packages
- Training of employee relations officers in employment law and adverse actions
- Timeframes for headquarters review by personnel operations, the regional administrator, legal affairs, and the director's office
- Settlement policies and procedures
- Timeframes for serving notice of adverse action

The review focused on the policies and procedures established by the department to ensure the timely and appropriate processing of employee disciplinary actions and on the time required to complete the review of adverse actions at each stage of the disciplinary process. The review also examined 52 sample cases, selected from six state correctional institutions predominantly from the 1999 and 2000 calendar years.

The procedures used in the review included the following:

- Review of policies and procedures related to the employee disciplinary process, investigative case acceptance, logging, and tracking
- Review of training programs and training histories related to the employee disciplinary process
- Review of investigative case files
- Interviews with representatives of the Department of Corrections (headquarters and institutions), the Attorney General's Office (defendant's counsel), and the Prison Law Office (plaintiff's counsel).
- Interviews with the U.S. Special Master for Pelican Bay State Prison

- Interview with the U. S. Special Master's use-of-force expert
- Interviews with officials and staff of the six selected state correctional institutions, including wardens, chief deputy wardens, investigation staff, and employee relations officers.

FINDINGS AND RECOMMENDATIONS

FINDING 1

The Office of the Inspector General found that the needless complexity of the employee disciplinary process causes delays that impair the ability of the Department of Corrections to take appropriate action against employees found to have engaged in misconduct.

The employee disciplinary process at the Department of Corrections is so complex and involves so many different entities that the department often is unable to meet the one-year deadline for investigating alleged misconduct and imposing disciplinary action against public safety officers. Although the department acknowledges the problem, it has not sought to quantify the percentage of cases in which the deadline is not met. Meanwhile, the inability of the department to take disciplinary action against employees found to have engaged in misconduct undermines the credibility of its commitment to require appropriate conduct, and fosters the perception that misconduct is tacitly accepted.

Under *California Government Code* Section 3304(d), employing agencies may not take adverse action against a public safety officer for misconduct unless the investigation into the misconduct is completed within one year of the date of discovery—that is, one year from the date a person authorized to initiate an investigation learned of the misconduct. Except in specified circumstances, the agency must also notify the officer in writing within the one-year period of its decision to impose disciplinary action and must provide the notification within 30 days of that decision.

When an alleged incident of misconduct results in an investigation by the Office of Investigative Services, the employee disciplinary process generally involves the following five steps:

- The warden initiates an investigation by signing a request for investigation (Form CDC 989).
- The Office of Investigative Services conducts the investigation
- The institution submits its decision of proposed disciplinary action to Department of Corrections headquarters for review.
- Department of Corrections headquarters makes its decision about disciplinary action and notifies the institution of its decision.
- The institution notifies the employee of the proposed disciplinary action.

In 43 percent of cases tested, the disciplinary process was not completed on time. The Office of the Inspector General selected a sample of 52 investigations completed during fiscal years 1999-00 and 2000-01 in which misconduct allegations were sustained to determine whether the employee disciplinary process was completed within the one-year

time limit. The 52 cases represented 31 percent of the 168 cases at six selected institutions that resulted in sustained allegations during the 1999-00 and 2000-01 fiscal years. Of the 52 cases, 40 cases involve allegations of misconduct by public safety officers. The review of the 40 cases showed that 17—43 percent—were not completed within the required one-year time frame. The average time between the date of discovery and the date of notification in the 40 cases was 325 days. In the 17 cases that exceeded the one-year requirement, the elapsed time ranged from 367 days to 566 days. An analysis of the 17 cases revealed the following:

- In five cases, the department took no disciplinary action against employees found to have engaged in misconduct because it failed to meet the one-year time limit.

- In one case, the employee voluntarily resigned while the investigation was in progress.

- In four cases, it appears that the department imposed formal adverse action against the employee by calculating the one-year time limit from the date of signature on the request for investigation CDC Form 989 instead of from the date of discovery.

- In seven cases, the department apparently was able to take disciplinary action against the employee because of special circumstances that exempted the department from the one-year requirement. Special circumstances included cases originally opened as criminal investigations and cases involving multiple subjects.

Unreasonable delays occur at every step of the disciplinary process. With an average of 325 days needed to complete a case, a delay in any of the five steps can cause the disciplinary process to exceed the one-year limit. Table 1, below, shows the average number of days and highest number of days required to process a case through each phase of the disciplinary process in the cases selected for review:

Table 1. Days Required for Each Phase of the Disciplinary Process

ACTION	AVERAGE DAYS TO COMPLETE	HIGHEST NUMBER OF DAYS
Initiate Investigation	32	345
Complete Investigation	192	449
Institution Decision	36	216
Headquarters Review	37	130
Service of Notice	10	67
Transfer or Mail	18	54

The process is complex, with no single entity responsible for monitoring case status. The Department of Corrections employee disciplinary process is a complicated procedure requiring multiple reviews or processing by various units within the department (see flowchart in the Attachment to this report, which diagrams the employee disciplinary

process). For example, a case might be subject to review by various institution officials, including the investigative staff, the employee relations officer, the associate warden, and the chief deputy warden, before the warden signs the request for investigation form. Similarly, at the headquarters review phase, a case could be subject to review by the personnel office, the legal affairs division, the regional administrator, and the director's office. Each additional level of review and processing carries an inherent risk of additional delay, mishandling, and miscommunication, especially given the geographic location of some of the institutions. Each unit in the process monitors case status within its area of responsibility. For example, the investigation units monitor open investigations, employee relations officers monitor cases received from the investigation unit and returned from headquarters, and the personnel unit tracks the cases through the headquarters review process. But the monitoring occurs at the discretion of the individual units. No single unit has responsibility for tracking cases from beginning to end to identify those in danger of exceeding the one-year time limit.

RECOMMENDATION

The Office of the Inspector General recommends that the Department of Corrections establish a centralized system to monitor and track the status of employee disciplinary cases. The department should consider modifying either the personnel operations information management system or the Employment Law Unit information management system to include this tracking capability. The system should also include an early warning mechanism for cases in danger of exceeding statutory time limits.

FINDING 2

The Office of the Inspector General found that the Department of Corrections has no clear guidelines for defining the prescribed one-year period for investigating alleged misconduct and imposing disciplinary action against peace officers or for identifying the required 30-day notification period.

Despite the requirements set forth in the *California Government Code*, the Department of Corrections has no clear criteria for determining when the one-year period for investigating misconduct and imposing disciplinary action begins and ends. The Office of the Inspector General found that the department has no clear guidelines for establishing the date the alleged misconduct was discovered, for defining who is "authorized to initiate an investigation," or for determining the date the department decided to impose disciplinary action in order to identify the 30-day notification period. Department employees also appear to be uncertain about whether the one-year statute of limitations applies only to peace officers or to all employees.

The absence of guidelines likewise impairs the department's ability to impose adverse action. In one recent case, for example, the department significantly reduced the severity of disciplinary action against two medical technical assistants at Pelican Bay State Prison because the institution was uncertain how to apply the one-year statutory limit to multiple allegations. In that instance, each of the allegations had a different discovery date and

therefore a different one-year statutory period. In an effort to make the strongest possible case, the institution bundled all of the sustained allegations together into one adverse action. The effect was to begin the one-year statutory period on the earliest date of discovery. But when it appeared that the one-year period associated with the earliest allegation might expire, thereby jeopardizing the entire case, the department decided to settle with much-reduced punishments.

Establishing the date of discovery. The department has not established clear criteria for determining the date alleged misconduct was discovered by a person authorized to initiate an investigation. In the past, the department has sometimes used the date the warden signed the request for investigation Form 989 as the date of discovery. But on October 16, 2001, the State Personnel Board dismissed a case on the grounds that the department failed to comply with the one-year time limit even though the elapsed time between the date of the investigation request and the date of notification was less than a year. The board's finding appears to be logical, in that the date the warden formally requested the investigation might be much later than the date the warden or other person authorized to initiate an investigation learned of the alleged misconduct.

Who is "authorized to initiate an investigation?" The department also has not clearly defined who is authorized to initiate an investigation. In an April 17, 2001 memorandum, the director of the California Department of Corrections identified those authorized to initiate an investigation as follows:

- The hiring authority of an institution (the warden);
- The department director, chief deputy directors, deputy director, regional administrators, assistant directors, and other top managers;
- Citizens;
- The assistant director or any of the special agents-in-charge of the Office of Investigative Services;
- The hiring authority or chief of the Inmate Appeals Branch, when serious allegations are included in the appeal of an inmate or parolee;
- In cases where an investigation may be compromised, any employee. (In those instances, the employee may go directly to the Office of Investigative Services.)

Despite the guidelines set forth, the memorandum did not sufficiently settle the question of when discovery occurs or who is authorized to initiate an investigation; nor it is clear that either the State Personnel Board or the courts have accepted the department's definition of those authorized to initiate an investigation. The memorandum did not clearly define "top-level managers," for example. At an institution, top-level managers might mean only the chief deputy warden or might include employees down to the level of lieutenant. The Office of the Inspector General found from its investigation that the department staff lacks consistent understanding of this provision and of how it relates to the one-year statute of limitations.

Establishing the date of the decision to impose disciplinary action. Similarly, the department has no clear guidelines for defining the date on which the department made its decision to impose discipline so as to define the 30-day period in which it must notify the

peace officer in writing of its decision. The decision date could be the date the warden approved the adverse action package, the date the Department of Corrections headquarters approved the package, or the date the institution was given approval to serve the employee. In the 40 test cases described in Finding 1, the Office of the Inspector General used as the decision date the date the institution received approval to serve the employee. Even with that generous interpretation of the decision date, the department did not meet the 30-day notification requirement in five of those cases.

Confusion about to whom the one-year statute of limitations applies. The Office of the Inspector General also found that many department employees mistakenly believe that the one-year statute of limitations on imposing disciplinary actions applies not just to public safety officers, but to all employees. The confusion stems from a March 16, 1998 memorandum issued by the department announcing a policy to apply the one-year statute of limitations to all employees of the department. The policy was rescinded by a second memorandum dated April 27, 2001 affirming that the one-year time limit applies only to sworn peace officers, but, according to a high-ranking official, many investigators and employee relations officers appear to be unaware of the policy change. The result may be that disciplinary actions against non-peace officers may be unnecessarily dropped or settled if it appears that the statute is running out or that these actions might be improperly given precedence over investigations of peace officers to whom the time limit does apply.

RECOMMENDATION

The Office of the Inspector General recommends that the Department of Corrections issue clear guidelines defining what constitutes the date of discovery, who is "authorized to initiate an investigation," and the date the department makes its decision to impose discipline.

FINDING 3

The Office of the Inspector General found that employee relations officers at institutions are not provided with adequate training and often lack the experience necessary to properly handle employee disciplinary actions.

Core responsibility for preparing adverse actions and representing institutions at State Personnel Board hearings falls to employee relations officers, but these employees typically have neither the training nor the experience to fulfill that responsibility. The Department of Corrections has not established either minimum background requirements or regular mandatory training for employee relations officers, and the position is most often designated as a training and development assignment with a two-year limited term.

Because of the lack of background requirements, those assuming employee relations officer positions have widely varying experience and often have little knowledge about labor law, adverse actions, supervision, or investigations. An employee relations officer may be a lieutenant with investigative and supervisory experience, a sergeant with no investigative experience and little supervisory experience, or a personnel relations specialist. Despite the obvious need for training, the department has no mandatory formalized training program for

employee relations officers and the type and amount of training these employees receive is inconsistent. Although the Department of Corrections Employment Law Unit has prepared resource materials to assist employee relations officers, there are no regularly scheduled training classes to provide basic information to employees assuming the position. Instead, most employee relations officers are faced with the need to learn on the job, finally gaining proficiency just as the two-year term ends and a new person is moved into the assignment.

The absence of adequate training and experience requirements for employee relations officers and the regular turnover in employee relations officer positions both contribute to the department's difficulty in meeting the one-year statutory deadline for completing the employee disciplinary process in cases involving public safety officers. The inherent inefficiency associated with the inadequately trained staff impairs the ability of institutions and the department to assemble and present the strongest adverse action cases possible and makes meeting the statutory deadlines more difficult.

In interviews with the Office of the Inspector General, department and institution staff consistently identified the need for formal training for employee relations officers as central to improving the quality and timeliness of adverse actions. The staff also cited the need for adverse action training to be provided to employees in legal affairs, personnel operations, and investigations units to help bring about congruence in the nature and format of information maintained. Employees noted, for example, that information contained in investigative files often is not sufficient or well-suited to the preparation and defense of an adverse action. Moreover, the quality of evidence and witness testimony deteriorates over time—witnesses may no longer be available and physical evidence may be lost, destroyed, or otherwise compromised. Also, testimony that was admissible in an administrative hearing may not be admissible in a judicial proceeding. If the department cannot use the information developed in the course of an investigation to take appropriate disciplinary action, the investigation is rendered moot.

RECOMMENDATION

The Office of the Inspector General recommends that the Department of Corrections establish a formalized training program for employee relations officers at the institutions. The department should also convert the employee relations officer positions from temporary training assignments to permanent positions.

FINDING 4

The Office of the Inspector General found that most of the employee disciplinary actions at the Department of Corrections proceed all the way through settlement and hearings before the State Personnel Board without advice or assistance from the department legal staff.

The Employment Law Unit of the Department of Corrections Legal Affairs Division is responsible for providing legal assistance and representation to the department in employee disciplinary cases. Yet, most employee disciplinary cases are handled from start to finish by

employee relations officers, who are on temporary assignment and have little training in employment law.

The employee disciplinary process and resulting adverse actions against employees are administrative actions and processes governed by statutory and case law, as well as by contractual provisions. Most employees facing adverse actions are represented by full-time labor relations specialists or attorneys provided by unions. These matters call for comparable legal expertise on the part of the department, and in some cases, the involvement of the legal staff is particularly critical. But under the department's current practice, the role of the Employment Law Unit is only advisory and must be requested by one of the participants. Unless the employee relations officer, the personnel operations staff, the regional administrator, or the director requests assistance, the legal staff has no involvement in the process.

The Office of the Inspector found, in fact, that most employee disciplinary actions at the Department of Corrections proceed with no participation at all by the Employment Law Unit staff. In many of the cases in which the Employment Law Unit does participate, that involvement is limited to representing the department or institutions at State Personnel Board hearings. Even in those cases, the legal staff often does not become involved until shortly before the hearing—after adverse action packages have already been prepared and served and the ability to correct errors or defects is limited.

Instead of active participation by the Employment Law Unit, most employee disciplinary actions are handled by employee relations officers, who, as discussed in the previous finding, usually have little background or training in employment law, employee discipline, or adverse actions and are not well-equipped to prepare adverse action packages. With inadequately prepared adverse action packages and insufficient time to prepare for hearings, the legal staff cannot effectively represent the department and the institutions against defendants' attorneys, who typically are provided by the union at the inception of the case.

The department has attempted to furnish legal support for employee relations officers by assigning two attorneys to each region from the Office of Investigative Services, along with an "attorney of the day" in headquarters. The attorneys are available to provide assistance in drafting adverse actions and representing institutions at State Personnel Board hearings, but they also function only in an advisory capacity and only upon specific request. And the one-year statutory deadline for serving an adverse action may discourage employee relations officers from using this resource by seeking what they may fear could be a time-consuming legal review.

The Office of the Inspector General also found that the Department of Corrections has no process for monitoring court decisions and State Personnel Board rulings that might affect employee disciplinary actions at the department and no mechanism for disseminating information about precedential decisions to employee relations officers. Most employee relations officers do not have access to the Internet, which precludes them from independently monitoring State Personnel Board decisions posted on the board's website. And despite its large size and geographic diversity, the Department of Corrections lacks a

comprehensive e-mail system to facilitate communication between headquarters staff and employees at the institutions. Internet access and e-mail capability could help offset the limited knowledge of employee relations officers and enable the department legal staff to disseminate relevant legal rulings and analyses affecting staff disciplinary matters.

Also in question is whether the Legal Affairs Division's process for evaluating State Personnel Board decisions and appealing lost cases is adequate to protect the department's right to discipline employee misconduct. The department currently has only ten cases in appeal, spanning the years 1999 to present. Many factors, such as the nature of the misconduct, the proposed adverse action, the precedential importance of the case, the division's caseload, and staff availability affect the decision to appeal. But, nonetheless, the number of cases under appeal appears to be small given the size of the department and the number of adverse actions undertaken each year.

RECOMMENDATION

The Office of the Inspector General recommends that the Department of Corrections establish formalized policies and procedures to expand the role and responsibility of the Employment Law Unit in the preparation of employee disciplinary actions. As part of that effort, the department should implement a process for monitoring court decisions and State Personnel Board rulings affecting employee disciplinary actions. The department also should provide Internet access to employee relations officers and conform to standard management practices by instituting a comprehensive e-mail system to improve communication between headquarters staff and institution employees. In addition, the department should review its policies and procedures for evaluating and appealing cases to ensure that it is vigorously defending its right to discipline employees guilty of serious misconduct.

FINDING 5

The Department of Corrections has not established policies and procedures governing settlement of employee disciplinary actions and has no means of monitoring or evaluating the settlement process.

About one-third of employee disciplinary cases in which allegations are sustained are resolved with the Department of Corrections agreeing to a settlement. But the department has no policies or procedures governing the settlement process and no means of evaluating the appropriateness of the settlements. The department has not defined the types of circumstances in which a settlement would be appropriate, who has authority to initiate and accept a settlement, or what information must be maintained to document and support the settlement agreement. Nor does the department maintain the information necessary to identify systemic problems in the settlement process.

In a sample of 52 cases, the Office of the Inspector General found that 16 (31 percent) were resolved by a stipulated settlement agreement between the department and the employee, but none of the files for those cases included information documenting the rationale for the

settlement. And, while the authority to offer or accept a settlement rests with the warden and settlements are supposed to be approved by the regional administrator or, in some instances, the director, the department maintains no information verifying that the settlements have been reviewed or approved.

Settled cases do not appear to share particular characteristics. In an attempt to evaluate the appropriateness of the settlements, the Office of the Inspector General examined various characteristics of the 16 sample settled cases. The review revealed few common attributes to distinguish those ultimately resolved by settlement. The characteristics examined included:

- The primary charge against the employee
- The number of days remaining before the deadline to serve the adverse action
- The recommended action
- The final disciplinary action

Type of offense not a factor in likelihood of settlement. The examination showed no relationship between the frequency of settlement and the types of charges or severity of the offense. Primary charges in the 16 cases included eight different offenses ranging from willful disobedience, dishonesty, and misuse of state property to over-familiarity, mistreatment of employees or the public, inexcusable neglect of duty, sexual misconduct, and domestic violence.

Time remaining to serve final notice also not a factor. The number of days remaining before the deadline to serve the adverse action also did not appear to be significant in determining which cases were likely to result in settlement. Only 25% of the cases settled were in danger of being lost because the statute of limitations was running out. Table 2 shows the time remaining to serve final notice in the 16 cases examined.

Table 2. Time Remaining to Serve Final Notice

Time Remaining to Serve Final Notice	Number of Cases
Under 180 Days	2
180 to 269 Days	6
270 to 365 Days	4
Over 365 Days	4

A recommendation for dismissal may increase likelihood of settlement. The review showed that in 15 of the 16 cases, the recommended disciplinary action was either a pay reduction or dismissal. Some form of pay reduction was also the most common recommended action in the cases reviewed that did not lead to settlement and therefore may not be an accurate predictor of settlement likelihood. But cases in which dismissal is recommended may be more apt to result in settlement because the burden of proof to sustain

the dismissal is rigorous and employees may be inclined to accept a settlement with a lesser penalty in lieu of termination.

The settlements examined appeared to be appropriate. The Office of the Inspector General noted that all six of the cases in which a pay reduction was recommended resulted in a pay reduction settlement. Of the nine cases in which dismissal was recommended, five were settled as voluntary resignations, and four were reduced to suspensions. Given that a settlement, by its nature, requires compromise on the part of the department, final action in these cases appeared to be consistent with the goal of taking appropriate measures against employees found to have engaged in misconduct. Table 3 shows the recommended and final disciplinary actions in the 16 cases examined that resulted in settlement.

Table 3. Recommended and Final Disciplinary Actions

Disciplinary Action	Number of Cases and Recommended Disciplinary Action	Number of Cases and Disciplinary Actions Imposed by Settlement	Changes Resulting from Settlement
Letter of Reprimand	0	1	+1
Pay Reduction	6	6	0
Suspension	0	4	+4
Demotion	1	0	-1
Dismissal	9	5	-4
Total Cases/Net Changes	**16**	**16**	**0**

Wide disparity among institutions in percentage of cases settled. The Office of the Inspector General found vast differences in the percentage of cases settled at the six correctional facilities reviewed. The percentage of settled cases ranged from 13 percent at one facility to 57 percent at another, reflecting the absence of consistent standards governing the settlement process. Table 4 shows the differences in settlement percentages at the six institutions.

Table 4. Percentage of Settled Cases by Institution

Facility	Number of Cases Reviewed	Number of Cases Settled	Percentage of Cases Settled
Facility A	9	2	22%
Facility B	9	2	22%
Facility C	7	4	57%
Facility D	6	2	33%
Facility E	13	5	38%
Facility F	8	1	13%
Total	**52**	**16**	**31%**

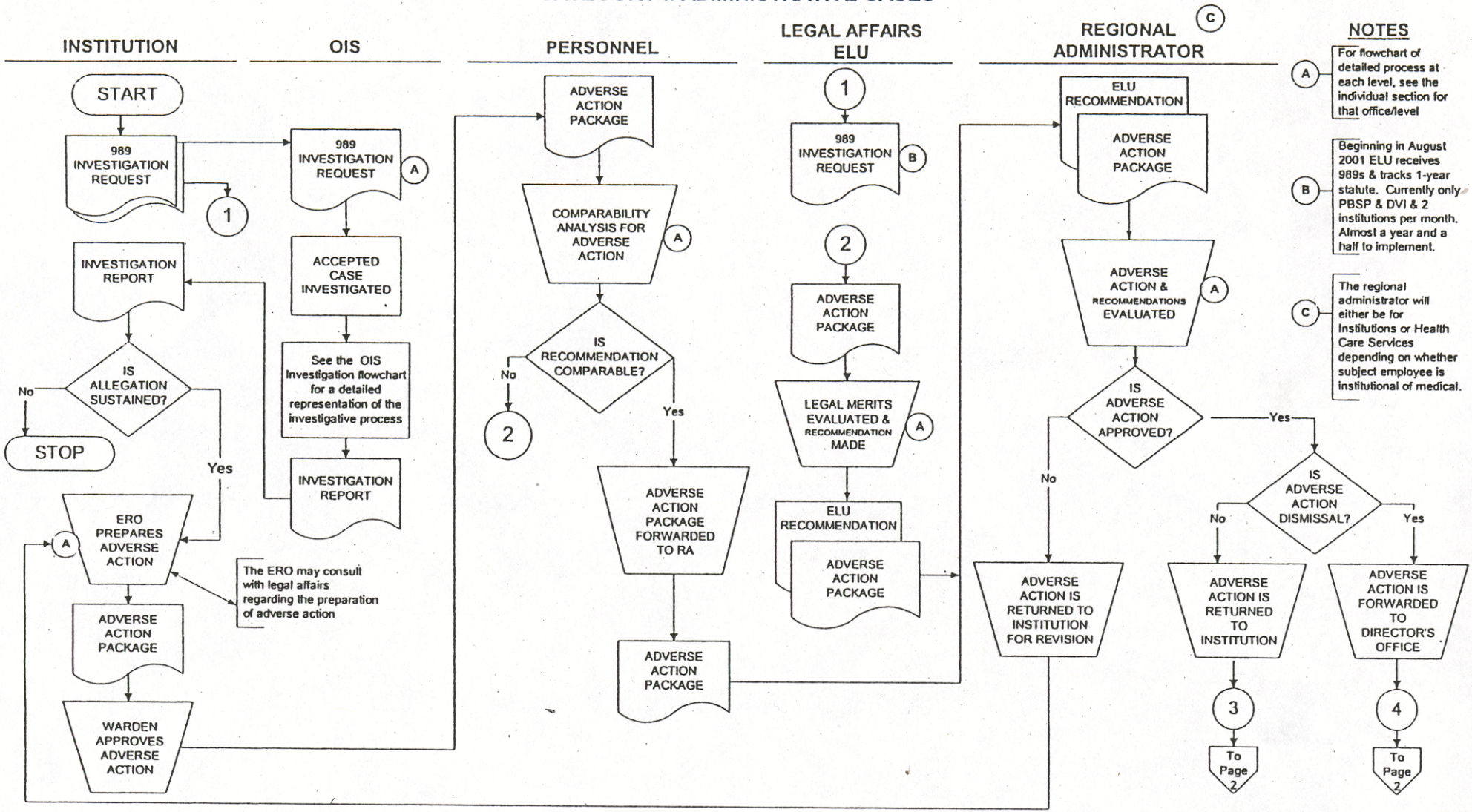
RECOMMENDATION

The Office of the Inspector General recommends that the Department of Corrections establish policies and procedures governing employee disciplinary action settlements and require that the necessary documentation be maintained for monitoring and evaluating the settlement process.

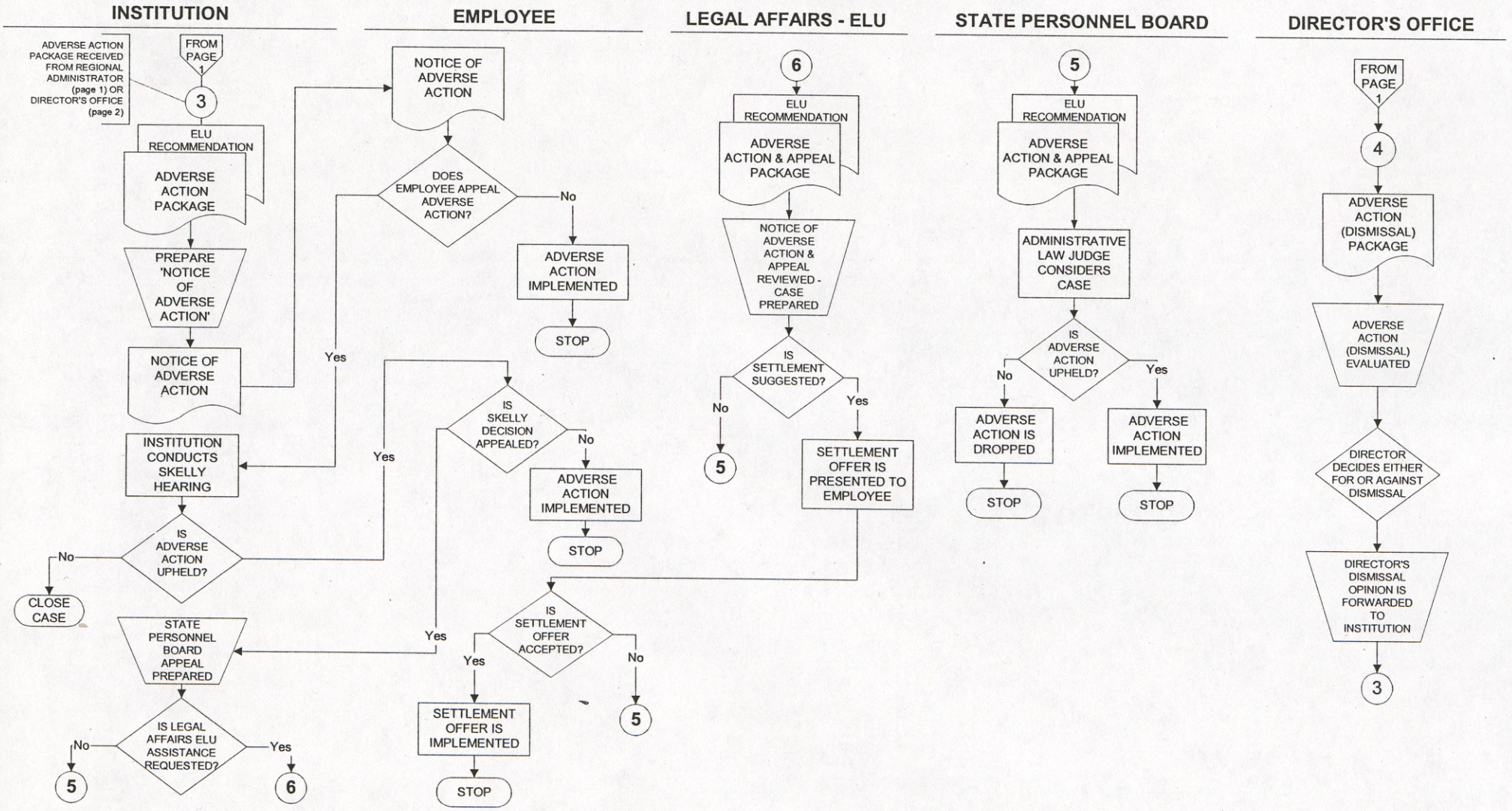
ATTACHMENT A

CALIFORNIA DEPARTMENT OF CORRECTIONS
EMPLOYEE DISCIPLINARY PROCESS
DIAGRAM

EMPLOYEE DISCIPLINARY PROCESS
CATEGORY II ADMINISTRATIVE CASES



EMPLOYEE DISCIPLINARY PROCESS
CATEGORY II ADMINISTRATIVE CASES



ATTACHMENT B

RESPONSE FROM THE CALIFORNIA DEPARTMENT OF CORRECTIONS

STATE OF CALIFORNIA—YOUTH AND ADULT CORRECTIONAL AGENCY GRAY DAVIS, Governor

DEPARTMENT OF CORRECTIONS
Legal Affairs Division
P.O. Box 942883
Sacramento, CA 94283-0001
(916) 445-0495
(916) 327-5306 - FAX

March 13, 2002

John Chen
Chief Deputy Inspector General
Office of the Inspector General
P.O. Box 348780
Sacramento, California 95834-8780

Via: John H. Sugiyama
Deputy Director
Legal Affairs Division

Dear Mr. Chen:

Draft Report – Employee Disciplinary Process

We have completed our review of the above referenced draft report. In order, we will discuss the Report's findings and recommendations. In large part we agree with the findings and have already implemented some, but not all, of the recommendations.

FINDING 1:

The Office of the Inspector General found that the complexity of the employee disciplinary process causes delays that impair the ability of the Department of Corrections to take appropriate action against employees found to have engaged in misconduct.

Recommendation: Establish a centralized system to monitor and track the status of employee disciplinary cases. The department should consider modifying either the personnel operations information management system or the Employment Law Unit information management system to include this tracking capability. The system should also include an early warning mechanism for cases in danger of exceeding statutory time limits.

Comments: We agree that the complexity of the system can cause delays resulting in the impairment of the disciplinary process. We also recognize that system complexity is only one of several factors that can cause delays in the system. Quite some time before the Report, the Employment Law Unit (ELU) created, with the approval and support of the Director, an investigation case tracking system. (See Attachment A.) ELU implemented the system in stages with the last institutions currently being brought on line. The system tracks all investigations, Category I and II and EEO, from the initiation of the investigation to its conclusion and on through the administrative review process. Status reports are prepared on a bi-weekly basis, sorted by the "must be served" date field, and distributed to the wardens and executive staff. (See Attachment B.)

In addition, at the time of the Report, an Adverse Action Task Force had been created by the Director and charged with recommending changes to the disciplinary system to eliminate, to the extent feasible, the complexity found in the process by the Inspector General. The work of the Taskforce is ongoing and Department management is currently considering preliminary proposals.

FINDING 2:

The Office of the Inspector General found that the Department of Corrections lacks clear guidelines for defining the prescribed one-year period for investigating alleged misconduct and imposing disciplinary action against peace officers.

Recommendation: Issue clear guidelines defining what constitutes the date of discovery, who is "authorized to initiate an investigation," and the date the department makes its decision to impose discipline.

Comments: The Department has notified all institutions and other components of the Department employing peace officers that the one year period, constituting the relevant investigatory period for peace officers, will be found to have commenced (for purposes of the tracking system) on the date that any supervisor and/or manager discovers the misconduct. (See Attachment C.) Due to the complexity of the statute of limitations controlling peace officer investigations, however, an attorney is involved in the initial evaluation process not only to determine the "discovery" date but also to determine when any exceptions to the statute of limitations may be applicable. Given the unique factual circumstances inherent in each investigation, the complexity of the statute defining the statute of limitations, and the lack of any judicial guidance on the subject, providing written guidelines that address every situation would be difficult, if not impossible, to develop. Because the question is primarily legal, having an attorney review each case at the outset, and continuously during the pendency of the case, should eliminate any meaningful concerns regarding the statute of limitations.

In addition, the 989 Form, or the request for investigation, has been modified to include a space to enter the discovery date. (See Attachment D.)

Defining the date that the Department makes its final decision to impose discipline is dependent solely on identifying the final decision-maker. For most peace officers, the final decision-maker is the Regional Administrator, the Deputy Director, or the Chief Deputy Director, Field Operations. While the Department has not experienced the dismissal of any case because of any failure to serve the final Notice of Adverse Action within 30 days of the final decision, the time period has been incorporated into the investigatory tracking system discussed above.

FINDING 3:

The Office of the Inspector General found that employee relations officers at institutions are not provided with adequate training and often lack the experience necessary to properly handle employee disciplinary actions.

Recommendation: Establish a formalized training program for employee relations officers at the institutions. The department should also convert the employee relations officer positions from temporary training assignments to permanent positions.

Comments: We agree, in principle, with the Inspector General's finding. The Taskforce discussed above is currently considering the role that the Employee Relations Officer (ERO) will have in the disciplinary process in the future. Determining the role of the ERO will also determine the extent of the training required. With that said, a system heavily dependent on a continual training program will frequently be plagued with training failures caused by the cyclical budgetary problems facing the Department. A frequent remedy in such lean periods is elimination of any training and per diem not mandated by law.

A training program, part of the curriculum of the University of California at Davis, Extension Program, and sponsored by the State Personnel Board, has been available in the past. The program provides complete coverage of the legal and practical issues found in the disciplinary process but is, unfortunately, too infrequently provided. An outside vendor, tentatively offering to provide the identical training at a competitive price, is currently being evaluated.

Permanent assignment of EROs is a valid suggestion; however, the position is in fact already permanently allocated to the Labor Relations Analyst classification. Due to long-standing recruiting problems in that classification, however, institutions have used Lieutenants, Sergeants and Correctional Counselors in Training and Development assignments to fill the positions. While training and experience can and do certainly improve the quality of the ERO's product, we have repeatedly found that the ERO's personal motivation to do an exceptional job in the assignment is the single most important factor in an ERO's success.

FINDING 4:

The Office of the Inspector General found that most of the employee disciplinary actions at the Department of Corrections proceed all the way through settlement and hearings before the State Personnel Board without advice or assistance from the department legal staff. Finally, it is not clear whether Legal Affairs Division's process for evaluating State Personnel Board decision and appealing lost cases is adequate to protect the department's right to discipline employee misconduct. Currently, the department has 10 cases in the process of being appealed. These cases span the years 1999 to the present. Many factors, such as case attributes (nature of the misconduct, proposed adverse action, the quality of the evidence), the precedential importance of

the case, the Division's caseload, and staff availability impact the decision to appeal. Therefore, the department's ability to appeal cases is not without limit. Nevertheless, given the size of the department and the number of adverse actions undertaken each year, the number of cases under appeal appears to be low.

Recommendation: Establish formalized policies and procedures to expand the role and responsibility of the Employment Law Unit in the preparation of employee disciplinary actions. Implement a process for monitoring court decisions and State Personnel Board rulings affecting employee disciplinary actions. Provide Internet access to employee relations officers and conform to standard management practices by instituting a comprehensive e-mail system to improve communication between headquarters staff and institution employees. The department needs to evaluate its policies and procedures for evaluating and appealing cases to ensure that it is vigorously defending its right to discipline employees guilty of serious misconduct.

Comments: Most cases do proceed through the entire process without input from an attorney in ELU. Once a decision has been rendered at the conclusion of a State Personnel Board hearing, however, an evaluation of each case is undertaken. ELU pays particular attention to those cases in which the Board has modified or revoked the disciplinary action taken by the Department. A committee, formed after a recent case brought the need to light, and consisting of the ELU Assistant Chief Counsel, a supervisor and a Staff Counsel with substantial experience with two different courts of appeal, reviews the cases brought to it to determine if an appeal should be recommended to the Governor's Office. While the case attributes identified above are certainly considered, of more importance are the legal standards applicable to appealing decisions by the Board, a constitutional body given substantial deference by the courts. The case is primarily evaluated to determine if an argument can reasonably be mounted that the Board's decision was not based on substantial evidence or that the Board abused its discretion in rendering its decision. For example, in recent cases we have been able to establish to the courts' satisfaction that the Board rendered a decision, revoking a dismissal sustained by the Administrative Law Judge's Proposed Decision, without any substantial evidence supporting that decision; that the Board improperly applied a statute of limitations to dismiss a valid adverse action; and that the Board improperly applied a statute pertaining to the discipline of managers to revoke an Associate Warden's discipline.

While the Department does process approximately 1200 adverse action cases per year, a relatively small number of those cases actually result in a Board decision on the merits. Of the 18 cases resulting in a written decision in January and February 2002, 8 cases were sustained; 5 cases received minor modifications; 1 case received a major modification, and 4 cases were revoked. Of the 4 revoked cases, all were done so on the basis of the Board's belief that the Department failed to present substantial evidence to support the action or a Board finding that the employee's conduct was in conformance with a widespread practice at the institution. Taken in perspective, it should not be statistically surprising that the Department currently only has approximately 10 cases in some stage of a post State Personnel Board appeal.

The Taskforce, discussed above, is considering the overall discipline process in the Department including the role of ELU in that process. The work of the Taskforce is ongoing, and Department management is considering preliminary proposals. The Director is also committed to improving overall departmental information technology and sharing.

FINDING 5:

The Department of Corrections has not established policies and procedures governing settlement of employee disciplinary actions and has no means of monitoring or evaluating the settlement process.

Recommendation: Establish policies and procedures governing employee disciplinary action settlement and require that the necessary documentation be maintained for monitoring and evaluating the settlement process.

Comments: We agree with the recommendation. It must be kept in mind the resolution of every case is likely to be as unique as the facts and parties involved. Each party to the adverse action, including the Department manager having settlement authority, is free to resolve the case on terms mutually agreeable. While certain factors can be broadly categorized, other factors, such as the prevailing philosophy held by the current members of the State Personnel Board, are difficult to articulate as they may evolve over time. Often legal issues, such as availability of witnesses and the quality of the evidentiary package, will be a significant component in a settlement evaluation. While attorney input in such situations would be highly valuable, insufficient legal resources exist to provide such direct legal support in every case. However, ELU staff are always available to address such issues and no request has ever been turned down. With that said, ELU has developed policies and procedures for the review of employee disciplinary action settlement proposals in cases handled by Staff Counsel. (See Attachment E.) In addition, and perhaps more critically, ELU believes that providing monthly reports on cases taken to decision after hearing before the State Personnel Board is the best guidance for the Department managers and Employee Relations Officers when considering settlement of a case involving similar misconduct. The ELU has recently implemented this report. (See Attachment F.)

The Taskforce, discussed above, is also considering an expansion of the role of ELU in the settlement process. The work of the Taskforce is ongoing, and Department management is considering preliminary proposals.

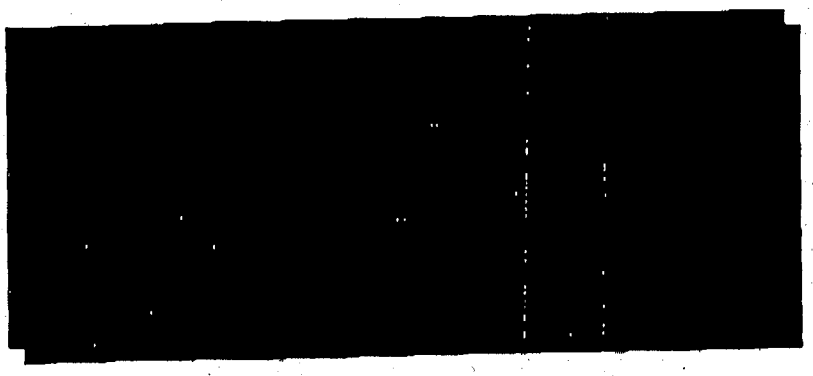
CONCLUSION:

We anticipate a follow-up report once the work of the Taskforce has been completed and final management decisions are put into place. Please feel free to contact the undersigned if you have any questions or comments.

Sincerely,

ROBERT K. GAULTNEY
Assistant Chief Counsel
Legal Affairs Division

Attachment A



Search By Date
Show All Records
Click on Help and Info for instructions on Searches.
Help and Info
AD
ASP
Double click on individual Case Number from search to view case.

Attachment B

Investigation Tracking - Not Served

Case Number	Employee Name	Employee Classification	Incident Date	Discovery Date	Investigation Initiated	Service Date
		SGT	UNKNOWN	7/16/01	7/16/01	7/15/02
		CC II	8/6/01	8/7/01	8/17/01	8/6/02
		CO	10/24/01	10/24/01	11/29/01	10/24/02
		TEACHER	6/12/01	6/12/01	7/16/01	6/12/04
		SUP INSTRUCTOR	UNKNOWN	7/16/01	7/16/01	7/15/04
		RN	VARIOUS	9/27/01	9/27/01	9/26/04
		LAUNDRY SUP	11/27/01	11/27/01	11/30/01	11/27/04
		LAUNDRY SUP	11/27/01	11/27/01	11/30/01	11/27/04

Attachment C

State of California

Memorandum

Department of Corrections

LEGAL AFFAIRS DIVISION
P.O. Box 942883
Sacramento, CA 94283
(916) 445-0485
(916) 327-5306 FAX

Date: July 17, 2001

To: Wardens
Institutions Regional Administrators
Health Care Services Division Administrators
Employee Relations Officers

Document redacted

State of California

Department of Corrections

LEGAL AFFAIRS DIVISION
P.O. Box 942883
Sacramento, CA 94283
(916) 445-0495
(916) 327-5306 FAX

Memorandum

Date: July 3, 2001

To: Richard J. Ehle
Assistant Deputy Director
Internal Affairs

Via: Robert Gaultney
Assistant Chief Counsel
Legal Affairs Division

Document redacted

Attachment D

STATE OF CALIFORNIA
CDC 989 (Rev 1/02)

DEPARTMENT OF CORRECTIONS

INTERNAL AFFAIRS INVESTIGATION REQUEST

☐ CATEGORY I ☐ Approved ☐ Disapproved	☐ CATEGORY II ☐ Approved ☐ Disapproved
TO: (Hiring Authority)	TO:
CASE NUMBER:	CASE NUMBER:

REQUESTED BY

NAME	TITLE	TELEPHONE NUMBER
DIVISION	ADDRESS	
SIGNATURE		DATE

COMPLAINANT

NAME	TITLE
ADDRESS	TELEPHONE NUMBER

SUBJECT OF INVESTIGATION

NAME	TITLE	
SOCIAL SECURITY NUMBER	DATE OF BIRTH	CDC HIRE DATE
HOME ADDRESS		TELEPHONE NUMBER
WORK ADDRESS		TELEPHONE NUMBER

ALLEGATIONS

DATE	TIME	LOCATION

DISCOVERY

DATE	BY (*Include circumstances of discovery in narrative*)

NARRATIVE (Use additional sheet(s) if necessary)

INVESTIGATING EMPLOYEE

NAME	TITLE
ADDRESS	TELEPHONE NUMBER

Attachment E

State of California

Memorandum

Department of Corrections

LEGAL AFFAIRS DIVISION
P.O. Box 942883
Sacramento, CA 94283
(916) 445-0495
(916) 327-5306 FAX

Date: July 23, 2001

To: All Attorneys
Employment Law Unit

Subject: **Unit Policies Regarding Disciplinary Actions**
ELU PM1

Document redacted

State of California

Memorandum

Department of Corrections

LEGAL AFFAIRS DIVISION
P.O. Box 942883
Sacramento, CA 94283
(916) 445-0495
(916) 327-5306 FAX

Date: August 6, 2001

To: All Attorneys
Employment Law Unit

Subject: **Settlement of State Personnel Board Cases**
ELU PM3

Document redacted

Attachment F

California Department of Corrections
Legal Affairs Division
John H. Sugiyama, Deputy Director

Catherine P. Bernstein, Liability Response Unit
Robert K. Gaultney, Employment Law Unit
Judith A. Harper, Correctional Law Unit
Kenneth L. Huez, Government Law Unit
Kathleen M. Keeshen, Major Litigation Unit

Report of State Personnel Board Administrative Law Judge Decisions

Published for the Month of February 2002

Prepared by: The Employment Law Unit

This report encompasses the State Personnel Board cases tried to conclusion by either the Employee Relations Officers or Staff Counsel in the Employment Law Unit. **For confidentiality reasons, any subsequent distribution of this report should be made to only those individuals with an absolute need to know.**

SPB Decisions by Month

Case Name	
Date of Dec	02/13/2002
Judge	Pipkin, Kymberly M.
Factual Basis	Physician given 5% for 6 mos after he was charged with and pled nolo to lying to a CHP officer falsely claiming to be enroute to an emergency at the prison when stopped for speeding
Result	Modified to LOR
Reasoning	The Board is satisfied that appellant, while not [illegible] dishonest, exaggerated the urgency of his mission [illegible] implying, by his use of the term "emergency" [illegible] to exceed the speed limit when traveling to the institution. Appellant knew, or reasonably should have known, that the nature of the existing emergency did not require his immediate presence at the institution nor would it justify his excessive speed. In addition, by tying his reason for exceeding the speed limit to his employment, appellant necessarily created a nexus between his off-duty misconduct and his employment. Because appellant's exaggeration is the type of conduct that could cause discredit to either the Department or his employment, we find that appellant's actions in this regard constitute other failure of good behavior.
Unique Legal Issue	What conduct amounts to a crime of moral turpitude.

Case Name	
Date of Dec	02/19/2002
Judge	Horst, Mary T.
Factual Basis	Supv of Acad Inst demoted (to Teacher) and transferred after she was rude and discourteous to teacher who asked for union rep during discussion of probation report; misrepresented facts in report; did not allow teacher to review or sign final probation report
Result	Sustained
Reasoning	Appellant was a supervisor. As such, she was expected to set an example for her subordinate employees. Appellant's conduct also created a significant disruption in the worki relationships of numerous members of the teach staf Modification of the penalty is not warranted. Ad na given the relatively small number of instructo at t vocational instruction unit and the record cre d by appellant's actions, a transfer to a ffere nst s appropriate.
Unique Legal Issue	None.

Case Name	
Date of Dec	02/22/2002
Judge	Segal, Melvin R.
Factual Basis	C/O given 5% for 6 mos after he was arrested for domestic violence and was rude to arresting officers.
Result	Modified to LOR
Reasoning	The serious allegations (domestic violence) were dismissed. On the other hand, there is no dispute but that appellant was argumentative and rude toward the responding police. His behavior was somewhat threatening. Considering dismissal of the allegations of domestic violence and the mitigating circumstances discussed, the discipline must be modified.
Unique Legal Issue	None

Case Name	
Date of Dec	02/14/2002
Judge	Segal, Melvin R.
Factual Basis	Supv of Acad. Instruction [illegible] after [illegible]e repeatedly, and after repeated cautions, a[illegible]ged in[illegible]tes access to confidential empl[illegible] for[illegible]tion
Result	Revo[illegible]
Reasoning	Un[illegible]ailablity of in[illegible]e witness, who was housed at another pri[illegible] was n[illegible] good cause for a continuance; allegations not s[illegible]orte[illegible]y preponderance of remaining evidence.
Unique Legal Issue	None

Case Name	
Date of Dec	02/22/2002
Judge	Pipkin, Kymberly M.
Factual Basis	C/O dismissed for making false derrogatory statements about supervisors and co-workers.
Result	Modified to 60 day suspension
Reasoning	Given appellant's previous work history, her most recent evaluation, the fact that some of the more inflammatory allegations about what appellant said to a witness and appellant's co-workers were dismissed for lack of proof, and the lack of progressive discipline, the penalty should be modified.
Unique Legal Issue	Skelly violation - Warden directing investigation and serving as Skelly hearing officer.

Case Name	
Date of Dec	02/25/2002
Judge	Kleinman, Susan G.
Factual Basis	C/O dismissed after she was arrested for driving under the influence, evading arrest and child endangerment and was violent and rude with the arresting officers.
Result	Sustained
Reasoning	Unfortunately there is no room for mitigation of the penalty under these circumstances. As a peace officer, appellant is held to a higher standard of conduct. She violated a public trust in endangering the lives of her child, the public and herself in recklessly driving her vhicle to evade the police and driving while intoxicated. Mitigation might have been appropriate had this been appellant's first adverse action. But there were three before, the most notable, [illegible] suspension should have acted as a "[illegible]" for appellant.
Unique Legal Issue	None